

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120250

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION FOR STAY PUT

On February 12, 2016, Student filed a motion for stay put. Student contends that his stay put placement is defined by a settlement agreement between District and his parents, executed on February 25, 2015, as amended on March 30, 2015, and subsequently documented and memorialized in an individualized education program for Student dated March 23, 2015. Student provided a signed copy of the settlement agreement, a copy of the March 23, 2015 IEP, a copy of Parents' partial consent to the IEP, and a declaration from Student's parents in support of his motion for stay put.

To date, the Los Angeles Unified School District has not filed an opposition or other response to Student's motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, if a student's placement in a program was intended only to be a temporary placement, the placement does constitute the stay put placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8 (*Verhoeven*); *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

A student's special education placement set forth in a settlement agreement reached by the parties may constitute the student's current educational placement, and may be found to be the student's stay put placement in a subsequent dispute. (*Casey K. v. St. Anne Comty. High Sch. Dist. No. 302* (7th Cir. 2005) 400 F.3d 508, 513; *Doe by Doe v. Independent Sch. Dist. No. 9* (N.D.Okla. 1996) 938 F.Supp. 758, 761; see also, *Jacobsen v. District of Columbia Bd. of Education* (D.D.C. 1983) 564 F.Supp. 166, 171-173.)

Courts in other cases have determined, based on the facts in those cases, that a student's placement, as described in a settlement agreement, is not the student's current educational placement and is not the student's stay put placement. (*Zvi D. v. Ambach, supra*, 694 F.2d at p. 908; see also, *Verhoeven, supra*, 207 F.3d at pp. 9-10 [dicta]; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1564 [hearing officer's prior decision does not constitute current educational placement for stay put purposes].)

DISCUSSION

In pertinent part, the parties' settlement agreement provided Student with the following:

1. Pending the results of assessments to which the parties had mutually agreed, Student would continue to receive 30 minutes per week of school-based language and speech therapy by a single provider pursuant to Student's last agreed-upon and implemented IEP for language and speech services, which was dated March 10, 2014;
2. Pending the results of the assessments, 15 minutes per week of school-based physical therapy pursuant to the March 10, 2014 IEP;
3. Behavior Intervention Implementation Services for 30 hours a week (equal to 1800 minutes per week) to be provided by a non-public agency rather than District staff;
4. Behavior Intervention Development Services for eight hours (480 minutes) per month, to be provided by a non-public agency; and,
5. Adult assistance using District staff for transportation purposes.

The settlement required District to convene an IEP team meeting within 20 days of the full execution of the settlement to document the terms of the agreement. The agreement did not address Student's placement or services during the extended school year.

District convened the IEP meeting on March 23, 2015. The IEP developed at that meeting offered Student the following, in pertinent part:

1. Placement in the “MRM” special day class at Russell Elementary School for 1300 minutes per week;¹
2. Transportation from home to school with a one-on-one special education assistant accompanying Student on the bus;
3. Physical therapy for 15 minutes a week during the regular school year, in a direct service, collaborative model;
4. Adapted physical education for 30 minutes a week during the regular school year, in a direct service model by a single provider;
5. Behavior Intervention Implementation services 1800 minutes per week provided by a single provider;
6. Behavior Intervention Development services for 480 minutes a month by a single provider;
7. Language and Speech therapy for 30 minutes a week to be delivered directly under a collaborative model.
8. Placement in a special day class during the extended school year, with bus transportation; Behavior Intervention Implementation; adapted physical education; and Language and Speech delivered collaboratively. The extended school year services did not mention Behavior Intervention Development services or physical therapy.

The March 23, 2015 IEP substantially tracked the parties’ settlement agreement as to the above placement and services. It did make some changes. The IEP does not state that the behavior intervention services would be provided by a non-public agency. It also changed the delivery model for language and speech services. Although the settlement agreement stated that language and speech services would be delivered by a single provider, as provided in Student’s March 10, 2014 IEP, the March 23, 2016 IEP stated that the services would be delivered under a collaborative model.

On April 13, 2015, Student’s father signed consent to implement all portions of the March 23, 2015 IEP, except the language and speech services. Student’s father stated that those services should be delivered by a single provider pursuant to Student’s March 10, 2014 IEP. He also requested District to add physical therapy services and Behavior Intervention Development services to Student’s extended school year program. It is unclear from Student’s motion whether these services were ever added.

¹ Neither the IEP nor Student’s motion for stay put defines what “MRM” stands for.

Student contends that the settlement agreement should define his stay put. However, there are portions of the March 23, 2015 IEP that modify the agreement. Student's parents consented to the implementation of the IEP with the exception of language and speech services. Therefore, with the exception of language and speech services, Student's stay put is defined by the March 23, 2015 IEP, Student's last agreed-upon and implemented IEP. Student's language and speech services are defined by his March 10, 2014 IEP. Student's stay put is thus as follows:

1. Placement in the "MRM" special day class at Russell Elementary School for 1300 minutes per week;
2. Transportation from home to school with a one-on-one special education assistant accompanying Student on the bus;
3. Physical therapy for 15 minutes a week during the regular school year, in a direct service, collaborative model;
4. Adapted physical education for 30 minutes a week during the regular school year, in a direct service model by a single provider;
5. Behavior Intervention Implementation services 1800 minutes per week provided by a single provider;
6. Behavior Intervention Development services for 480 minutes a month by a single provider;
7. Language and Speech therapy for 30 minutes a week to be delivered directly by a single provider.
8. Placement during the extended school year, with bus transportation; Behavior Intervention Implementation; and adapted physical education.

Student offered no evidence that another IEP controls his extended school year programming or services. There is no evidence that his March 10, 2014 IEP addressed extended school year, and therefore no basis to find that Student's stay put for extended school year includes language and speech services since Parents did not consent to the language and speech services offered in the March 23, 2015 IEP.

IT IS SO ORDERED.

DATE: February 24, 2016

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings